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*Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION *IN LIMINE* NO. 7 TO
EXCLUDE PRIOR JUDICIAL
OPINIONS ON PLAINTIFF'S
EXPERTS**

(Assigned to the Honorable David G.
Campbell)

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively “Bard”) submit this response in opposition to Plaintiff’s Motion *in Limine* No. 7 and respectfully show the Court as follows:

ARGUMENT AND CITATION OF AUTHORITY

Evidence is relevant when it has “any tendency to make a fact more or less probable than it would be without the evidence.” Fed. R. Evid. 401(a). Relevant evidence may only be excluded “if its probative value is substantially outweighed” by the danger of prejudice. Fed. R. Evid. 403. The Plaintiff’s Motion is premature and ignores these principles of law. Therefore, the Plaintiff’s Motion should be denied.

A. Previous Rulings Could Become Relevant Based on Plaintiffs’ Experts’ Testimony.

In *Wilson v. Maricopa Cty.*, the Court was presented with an unusual situation in which the basis for the expert’s previous exclusion was unclear. No. CV-04-2873 PHXDGC, 2007 WL 686726 (D. Ariz. Mar. 2, 2007). There was argument that “the disqualification occurred because of counsel’s untimely disclosure, not because of [the expert’s] lack of qualification.” *Id.* at *11. And, the trial minutes discussing the specific basis for the expert’s exclusion were not before the Court because they were illegible. *Id.* That would not be the case here, particularly given the comprehensive nature of some previous judicial opinions excluding the Plaintiff’s expert witnesses.

In any event, Bard agrees that evidence of prior *Daubert* rulings will likely be irrelevant, and does not intend to introduce such evidence during *voir dire* or in opening statement. But, the relevancy of such evidence will depend entirely on the context and testimony of the evidence introduced by the Plaintiff. For example, if a the Plaintiff’s expert testifies as to how many courts have qualified that expert, or otherwise suggests that his or her admission in other litigation means they are qualified to testify in this case, then prior exclusions may become relevant for cross-examination. A number of other situations may arise that make a complete prohibition on prior judicial opinions premature at this pretrial stage. As a result, the Plaintiff’s Motion should be denied.

CONCLUSION

For these reasons, Bard respectfully requests that this Court deny Plaintiff's Motion in *Limine* No. 7.

RESPECTFULLY SUBMITTED this 9th day of February, 2018.

s/ Richard B. North, Jr.
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**Attorneys for Defendants C. R. Bard, Inc. and
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
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